

ORDINANCE REPORT MINUTES

Excerpted from the Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, September 14, 2009, 6:00 P.M.

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2009-17

AN ORDINANCE TO AMEND ARTICLE V SPECIAL USES SECTION 6 DISCONTINUANCE OF SPECIAL USE SUBSECTION A AND B OF THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to state that any expansion or alteration to an approved special use shall void the approval and they must cease operation immediately unless the applicant/owner comes into compliance, amends his application or files a rezoning petition (if necessary) within thirty (30) days.

Mrs. Rector stated this ordinance used to state that the Special Use would become null and void immediately if it was expanded or altered. She stated the Commissioners changed it to where it would read "the approval shall be null and void UNLESS the applicant owner comes into compliance, amends his application or files a rezoning petition if necessary within thirty days." She stated The Commissioners did not feel that they should have to stop immediately. She stated they felt like the person should have the opportunity to come into compliance. She stated Commissioner Williams has another amendment he would like the Board to hear.

Commissioner Williams approached the podium and stated that he has no problem with sub-paragraph A. He stated this ordinance was passed by the Board of Commissioners two to one with himself being the one who opposed it. He stated the problem he had with this ordinance was the wording "nor expanded". He stated he looks at this like someone who is making cabinets in their garage and needs extra space to continue that business and he is in the process of forming a committee to make Warrick County a real Mecca for small businesses. He stated he thinks they have a real opportunity and a niche there. He stated he saw the wording "nor expand" as being a hindrance to small business growth. He stated since the time the Board has passed this, Commissioner Mosbey has reconsidered his position and he would like to request that this be sent back to the Board of Commissioners.

Attorney Doll stated there are a couple of ways the Planning Commission can send this back to the Board of Commissioners. He stated the Board could do as Commissioner Williams asks and strike the "nor expanded" and "or expanded". He stated whether the Board philosophically agrees with that or not, by striking it, it changes it and it makes it necessary to go back to the Commissioners. He stated the Commissioners can then wrestle with this issue about if any expansion is appropriate, is some expansion appropriate, how much etc. and then send it once again back to the Area Plan Commission. He stated to recall that to become a valid zoning ordinance the identical language has to pass at both levels of government, the Commissioners and the Area Plan Commission. He stated if the Board kills this tonight by defeating it so that the Commissioners can work on it, then they don't have a vehicle to fix this

problem and someone would have to start a whole new ordinance and there is really no reason to do that. He stated if the Board wants to give the Commissioners a chance to take another look at it, he would recommend somebody make a motion to amend this amended version of proposed ordinance 17 and strike 4 words. He stated ultimately the Planning Commission will get the final say about changing that because what they decide has to come back before the Board where they can debate if they agree or not if it is worded correctly. He stated the merits of "to expand" or "not to expand" will be debated when it comes back after the Commissioners have rethought this matter one more time.

Commissioner Noffsinger stated he thinks it is personally dangerous to take out those 4 words. He stated he understands where Commissioner Williams is saying he wants people to have the ability to grow a business in Warrick County. He stated but unlimited, uncontrolled expansion of businesses could turn out to be a hindrance in residential areas. He stated he understands Commissioner Williams would like to review this and he will support that. He stated he would like to be a little safer and add that these businesses can expand up to 25% before they have to come back to the Board.

Attorney Doll stated that would keep the issue alive and send it back to the Commissioners.

Commissioner Williams stated he has no problem with that. He stated that would put the issue back in the Commissioner's hands and they can do what they want with it.

Attorney Doll stated that would work, the Board can interject words into the ordinance and that would send it back to the Commissioners.

Commissioner Noffsinger stated the Board can also accept this today.

Attorney Doll stated then it becomes law.

Commissioner Noffsinger stated then the ordinance will be passed.

Attorney Doll stated the Commissioners would have to then start over again. He stated the Board would look a little foolish by amending a version then turning right around in 30 days and amending it again. He stated Commissioner Noffsinger is right, that is a solution but he would not recommend it.

Commissioner Noffsinger stated he wanted the Board to understand that they also have that option and don't have to amend the wording.

Attorney Doll stated they do. He stated if the Board wants to keep this open for discussion something has to change in the words on the paper tonight which forces it to go back to the Commissioners and then back to the Planning Commission.

Mrs. Rector stated they have to remember this is for home occupations, not commercial businesses that they are talking about. She stated this is strictly at someone's house.

Commissioner Williams stated one of the problems that hopefully this committee will look at, when they talk about Subdivision Control Ordinances for example, is there's a lot of people that live far away from people and the rules are the same for them as if they lived in a lot with 120' frontage. He stated he is not really sure that is where the County really wants to be either. He stated that is a different issue. He stated the issue tonight is this just needs to be changed, they can take the word "nor" and change it to "or" and it

will still come back so it doesn't matter. He stated he would just like to talk about it at the Commissioner level one more time. He stated that Commissioner Mosbey did ask him to apologize for him because he had another commitment and could not be here. He stated Commissioner Mosbey himself would tell the Board that he wants to take another look at it.

The President asked what the Board's wishes are.

Commissioner Noffsinger stated before the Board votes he just wants them to know that this is going to come back to him again so he has spoken his peace and he is going to leave it to the board by abstaining.

Mike Moesner made a motion to amend Section 6 Paragraph B of the amended ordinance to say after the words "nor expanded", add three words "more than 25%".

Guy Gentry seconded and the motion carried with all members voting for the amendment except for Commissioner Noffsinger who abstained.

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2009 -09

AN ORDINANCE TO AMEND ARTICLE XV HIGHWAY COMMERCIAL – "C-3"
DISTRICT (changes in bold and italic) OF THE COMPREHENSIVE ZONING ORDINANCE
FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to add additional uses and alphabetize the uses.

Mrs. Rector stated the only thing that the Commissioners amended on this one was to add "Commercial" to #30 Woodworking Shop.

Mr. Moesner asked if they approve this tonight then that is it.

Attorney Doll stated yes, it will have passed both places identically worded and it will be the Ordinance.

Mr. Gentry asked what other type of woodworking shop would be under a C-3 zoning.

Mr. Moesner stated maybe someone with a personal shop in the back.

Mr. Gentry asked if they would in a commercial district.

Mrs. Rector stated she guesses the Commissioners meant if a person with a hobby if they say they have a little wood working shop, the Board wouldn't require them to rezone to a "C-3".

Brad Overton made a motion to accept Ordinance no. 2009-09.

Mike Moesner seconded.

Larry Willis asked Attorney Doll if item #22, Self Storage Warehouse Facilities (also required to have a "Special Use Permit" if have outside storage) would eliminate him from voting on this.

Attorney Doll stated he can't remember if he abstained before when it was initially passed.

Mr. Willis stated he believes he abstained at that vote.

Attorney Doll stated that creates a problem with Commissioner Noffsinger abstaining, they don't have a quorum.

Commissioner Noffsinger stated he will vote on this.

Larry Willis stated he would vote for it anyway but he thinks he does have a conflict of interest.

Mr. Gentry stated he wants to go back to that "Commercial" word. He stated he thinks he's had some people come in and they've tried to say it's a hobby and it's been a pretty good little business out of their home in woodworking. He asked how we define "Commercial".

Attorney Doll stated Webster's Dictionary defines "Commercial", there is case law as well that defines it but the Ordinance does not. He stated that is not unusual, it is difficult to define every word that appears in the County Ordinance so we turn to these accepted, recognized outside sources. He stated Commercial usually means for a profit, larger scale, maybe employees. He stated those types of things would be evidences that there is a commercial business which ought to be in a commercially zoned area. He stated that is what the Commissioner's debate was. He stated versus the retired / semi-retired gentleman who is handy who wants to make things, whether he sells them, gives them away or what have you but he takes his garage, sets up some equipment and starts making things. He stated the question is if the Board is going to be forcing him to rezone his property or moving that enterprise to a commercially zoned location. Attorney Doll stated they spent a lot of time talking about cabinets and that's how that word got added into there.

Commissioner Noffsinger stated this ordinance doesn't state cabinet making shop, it says woodworking shop. He stated coming from both sides of dealing with citizens of the county, citizen A is now running into a conflict with citizen B and saying ,they've got a woodworking shop and now they need to rezone their house to a "C-3" and he wants to protect someone from that. He stated this guy might be making rocking chairs for his grandchildren as a hobby. He stated if they don't put commercial in there then he might be subject to rezoning his property.

Mr. Gentry asked what if he is making rocking chairs and taking them to Trader Joes.

Attorney Doll stated then he would be commercial, it would be a fact by fact, case by case determination. He stated if he's making 500 chairs a month, clearly it would be a commercial operation.

Mr. Overton stated his father in law has a woodworking shop and he wants to make sure he doesn't have any conflicts of interest with this.

Attorney Doll asked if he personally has any involvement in it.

Mr. Overton stated he doesn't do anything with it, he will help him move a large piece or two that he can't pack in himself every once in a while.

Attorney Doll stated he doesn't think he has a conflict.

Brad Overton asked if they could review this ordinance again because it has been several months since they last looked at it and it's a little confusing.

Mrs. Rector stated she agrees with Mr. Overton and wants to get some clarification as well because it is a little confusing. She states there is a Home Occupation that limits a person to 25% of the first floor area of the home. She stated, for example, her stepdad would make things to take to craft fairs. She stated no one came to the house buying anything, he made them in his garage and took them to these shows. She stated he received a conditional use at that time for a home occupation. She stated that would not be a commercial enterprise as long as it fit under the definition of a home occupation where a person doesn't have retail sales, they don't have employees. She stated that is why she gets mixed up on this amendment because when they do this, they will have to amend their definition of home occupation if it can be expanded to any size. She stated she just wants to bring that up right now.

Attorney Doll stated he doesn't think they will have to do that. He stated he believes if they just put woodworking shops in this list in "C-3", her father in law now might have to put the "C-3" zoning on his property. If we just use the words woodworking shop, there could be so many different sizes of these shops, and the idea of the Commissioner's was they ought to be some way to define them differently and the word selected by the Commissioners was "Commercial".

Commissioner Noffsinger stated there was a question of whether they should put "Commercial" in front of other things on that list. He stated he would say yes to every one of those for the simple reason that they are left open to interpretation. He stated whenever they leave an ordinance open to interpretation people can misuse the ordinance.

Attorney Doll stated some of them are obvious commercial enterprises: a restaurant, a taxidermist.

Mr. Gentry stated as far as a taxidermist, he knows several of those in homes.

Attorney Doll stated that might be a different situation and it seems to him they are really doing it for profit.

Larry Willis stated it could also fall under a home occupation.

Attorney Doll stated that is what Mrs. Rector's point was. He stated this butts up against home occupations. He stated when there are people doing certain things in home occupations that are also under the "C-3" list they are considering making this a scale issue. He stated it would have to do with how big of a scale are they doing it on. He stated if they are doing it to a large enough extent it ought to be in a "C-3".

Commissioner Noffsinger stated if someone is doing it as a hobby it doesn't fall under any ordinance at all. He stated the reason he didn't go any farther with this is because they weren't addressing those specific issues and he just wanted to address the issue at hand, and after that is done he would like to bring some of these back up.

Attorney Doll stated he would recommend rather than not go forward this ordinance, because other things have been fixed on the previous page, to go ahead and approve this and then come back and if they want to add Commercial as a definitional term to any other enterprise they see here, they'll amend it again.

Commissioner Noffsinger stated he would support that view.

Mrs. Rector stated he would like to change that as well.

The President stated they've got a motion and a second on the floor and called for a vote.

The motion carried with all members voting for the motion except Larry Willis who abstained.

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2009 - 12

AN ORDINANCE TO AMEND ARTICLE XXIV ADMINISTRATION SECTION 6 FEES AND EXPENSES FOR NOTICE OF THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to exempt governmental agencies located in Warrick County from paying fees.

Mrs. Rector stated what the Board approved did not state "located in Warrick County" it just stated any governmental agencies.

Attorney Doll stated the Commissioners, he thought, felt that if it was a local government entity it should be exempt but if it wasn't a local governmental agency they ought to pay fees. He stated if it's an agency located in Warrick County, that doesn't mean it's a local government agency. He stated that could be the State of Indiana, they've got a facility here or the US Government if they have a facility here. He stated he doesn't know if they've accomplished the purpose but it creates an ambiguity. He stated now Mrs. Rector will have to decide if it is an exempt government agency or not an exempt government agency when they come in and file for a permit.

Mr. Overton suggested changing it to just Warrick County Governmental Agencies.

Attorney Doll stated then they've excluded the Town of Tennyson, Elberfeld, Newburgh, and Chandler or City of Boonville. He stated you would just have to list them. He stated that would be fine but the Board can see what he means, if the State of Indiana has a facility in the county they get free zoning.

Mr. Willis stated he doesn't see it like that because they're office of residence is in Indianapolis.

Attorney Doll stated not necessarily. He stated if there's a habitat area out there that's manned, that could be the headquarters for that habitat.

Mr. Willis stated but they would have a director from someplace else that they receive orders from.

Mr. Gentry stated it's all his tax dollars if INDOT wants to do something at Unit 4 he says let them do it without a fee anyway.

Commissioner Noffsinger asked how about wording it "local government agencies."

Attorney Doll stated he's not sure what local means.

Mrs. Rector stated she has never seen the State of Indiana rezone anything or do a subdivision.

Mr. Gentry and Mr. Willis stated they just do it.

Mike Moesner made a motion to approve Ordinance 2009-12.

Larry Willis seconded and the motion carried with all members voting for the ordinance except Commissioner Noffsinger who abstained.

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2009-16

**AN ORDINANCE TO AMEND ARTICLE V SPECIAL USES SECTION 5 PROCEDURE
SUBSECTION J BY DELETING SUBSECTION 1 OF THE COMPREHENSIVE ZONING
ORDINANCE FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to remove the requirement of a minimum of 100' of frontage on a dedicated roadway for a mobile home. This requirement is in the development regulations.

Mrs. Rector stated the Commissioners wanted the sentence added to this paragraph "This requirement is in the development regulations". She stated it should have been there but it was left off when they brought it to the Board before.

The President asked if there was any discussion. There being none he entertained a motion.

Brad Overton made a motion to accept the ordinance as amended.

Larry Willis seconded and the motion carried with all members voting for the ordinance except Commissioner Noffsinger who abstained.